

1 Kip Evan Steinberg (SBN 096084)
2 LAW OFFICE OF KIP EVAN STEINBERG
3 Courthouse Square
4 1000 Fourth Street, Suite 600
5 San Rafael, CA 94901
6 Telephone: 415-453-2855
7 Facsimile: 415-456-1921
kip@steinberg-immigration-law.com

6 **Attorney for Plaintiff AZIN MORTAZAVI**

7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11
12 AZIN MORTAZAVI)
13 Plaintiff,) **Civil Action No.**
14 v.)
15 ROSEMARY MELVILLE, District Director)
16 USCIS San Francisco District Office)
17 EMILIO T. GONZALEZ, Director, USCIS)
18 MICHAEL CHERTOFF, Secretary)
19 Department of Homeland Security)
ALBERTO GONZALES, Attorney General,)
Department of Justice)
Defendants)

)

20 **I. INTRODUCTION**

21 This action is brought by Plaintiff to compel Defendants to process the
22 necessary background checks and adjudicate her application for Adjustment of
23 Status to Permanent Residence (Form I-485) under 8 U.S.C. §1255. Plaintiff's
24 application was filed on January 9, 2006 with the National Benefit's Center of
25 the United States Citizenship and Immigration Services ("USCIS"). Plaintiff
26 has sent inquiries and requests for adjudication concerning this application.
27

1 Defendants have failed to complete her background check and failed to
2 adjudicate the application.

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4 **II. PARTIES**

5 1. Plaintiff, Azin Mortazavi, is currently an applicant for adjustment of
6 status to lawful permanent residence as the spouse of a United States citizen.
7 She resides in Oakland, California.

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9 2. Defendant Rosemary Melville is sued in her official capacity as the
10 District Director of the San Francisco District Office of the United States
11 Citizenship and Immigration Services, an agency within the Department of
12 Homeland Security, which is charged by law with the duty of adjudicating I-
13 485 applications for adjustment of status to lawful permanent residence under
14 8 U.S.C. §1255.

15

16 3. Defendant Emilio T. Gonzalez is sued in his official capacity as the
17 Director of the United States Citizenship and Immigration Services, an agency
18 within the Department of Homeland Security, which is charged by law with the
19 duty of adjudicating I-485 applications for adjustment of status to lawful
20 permanent residence under 8 U.S.C. §1255.

21

22 4. Defendant Michael Chertoff is sued in his official capacity as the
23 Secretary of the Department of Homeland Security. In this capacity he has
24 responsibility for the administration and enforcement of the immigration laws
25 pursuant to 8 U.S.C. §1103(a) including the accurate, efficient and secure
26 processing of immigration benefits.

5. Defendant Alberto Gonzales is sued in his official capacity as the Attorney General of the United States and is charged with the authority and duty to direct, manage, and supervise all employees and all files and records of the Department of Justice including security checks required to obtain an immigration benefit such as adjustment of status to lawful permanent residence. He oversees the FBI which is responsible for conducting both criminal record checks and the National Name Check Program (“NNCP”). The NNCP disseminates information from the FBI’s Central Records System in response to requests submitted by federal agencies, including USCIS.

III. JURISDICTION

6. This is a civil action brought pursuant to 28 USC §§ 1331 and 1336 to redress the deprivation of rights, privileges and immunities secured to Plaintiff, by which jurisdiction is conferred, to compel Defendants to perform duties owed to Plaintiff.

7. Jurisdiction is also conferred by 5 USC §§ 555(b) and 704. Plaintiff is aggrieved by adverse agency action in this case, as the Administrative Procedures Act requires in order to confer jurisdiction on the District Courts. 5 USC § 702 *et seq.*

8. The aid of the Court is invoked under 28 USC §§ 2201 and 2202, authorizing a declaratory judgment.

9. Costs and attorneys fees will be sought pursuant to the Equal Access to Justice Act, 5 USC § 504, and 28 USC §2412(d), *et seq.*

IV. VENUE

10. Venue is proper in the Northern District of California since Plaintiff resides in Oakland, California.

V. EXHAUSTION OF REMEDIES

11. Plaintiff has exhausted her administrative remedies. Plaintiff, her husband, and his attorney have made several inquiries concerning the status of her I-485 application to no avail. (*See Attachment A*)

Plaintiff has no other adequate remedy available for the harm she seeks to redress - the failure of Defendants to adjudicate her application for adjustment of status to permanent residence in a timely manner.

VI. REMEDY SOUGHT

12. Plaintiff seeks to have the Court compel Defendants to take whatever steps are necessary to adjudicate her pending I-485 application forthwith.

VII. STATEMENT OF FACTS

13. Plaintiff is a native of Iran. Her husband is a United States citizen. (See Attachment B) They were married on December 15, 2003 in Tehran, Iran.

14. Plaintiff was issued a K-3 visa by the United States Embassy in Ankara, Turkey on October 25, 2005. (*See Attachment C*)

15. The purpose of a K-3 visa is to allow the spouse of a United States

1 citizen to come to the United States and apply for adjustment of status to
2 lawful permanent residence. See 8 U.S.C. §101(a)(15)(K)(ii) and 8 C.F.R §
3 245.1(c)(6)(ii).

4

5 16. On information and belief, the State Department cleared Plaintiff's
6 security background checks prior to issuing her a K-3 visa.

7

8 17. Plaintiff arrived in the United States on December 29, 2005 and was
9 admitted in K-3 status. (*See Attachment C*)

10

11 18. On January 9, 2006 Plaintiff applied for adjustment of status to
12 lawful permanent residence under 8 U.S.C. §1255 with the National Benefits
13 Center of USCIS. According to the receipt for the I-485 application, Plaintiff's
14 alien registration number is A98 750 617. (*See Attachment D*)

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16 19. Plaintiff's alien registration file includes a notice of approval of the K-
17 3 visa petition (Form I-129F) processed under 8 CFR § 214.2(k)(7); a notice of
18 approval of an immediate relative visa petition (Form I-130) processed under 8
19 CFR § 204.1; and a pending application for permanent residence (From I-485)
20 processed under 8 CFR § 245.1 (*See Attachment E*)

21

22 20. Defendants have taken Plaintiff's fingerprints multiple times on the
23 following dates: February 17, 2006, May 9, 2006, June 17, 2006, July 20,
24 2006, February 22, 2007. (*See Attachment F*)

25

26 21. Plaintiff and his wife were interviewed at the USCIS District Office in

San Francisco on May 8, 2006. At this interview Plaintiff was informed that her application for adjustment of status could not be approved since her FBI name check was pending. (*See Attachment G*)

22. The USCIS District Office in San Francisco is currently processing I-485 applications filed as of January 13, 2007. Since Plaintiff's I-485 application was filed on January 9, 2006, it is significantly past the current processing time. See List of San Francisco District Office Processing Dates as of July 16, 2007 found at <https://egov.uscis.gov/cris/jsp/ptimes.jsp>.

(Attachment H)

VIII. CAUSE OF ACTION

23. Plaintiff alleges that Defendants have a non-discretionary duty to complete the processing of her application for permanent residence in a reasonable time. Despite the fact that Plaintiff's application has been pending since January 9, 2006, Defendants have failed to complete the processing of the application.

24. Plaintiff has made several inquiries about the status of her application. In response to these inquiries, Plaintiff was informed that her I-485 application remains pending because the name check has not been completed. (*See Attachment A*)

25. Plaintiff asserts that her application has been pending for a period of time which is unreasonable and that Defendants have no legal basis for failing to proceed with the case.

1 26. It is the sense of Congress that the processing of an immigration
2 benefit application should be completed not later than 180 days after the initial
3 filing of the application. 8 U.S.C. § 1571.

4
5 27. Plaintiff wishes to become a U.S. citizen as soon as possible and
6 enjoy all the liberties and freedoms attendant thereto, including the right to
7 vote, jury service, and the freedom to travel abroad and return to the United
8 States without fear of exclusion. To be eligible for naturalization, Plaintiff
9 must have resided in the United States for three years as a lawful permanent
10 resident. 8 U.S.C. §1430 (a). Plaintiff's ability to apply for naturalization has
11 been delayed since her application for permanent residence has not been
12 adjudicated.

13
14 28. Plaintiff has also been damaged by Defendants' inaction in
15 that: Plaintiff's immigration status is considered "temporary" for an
16 indefinite period of time and she is thereby deprived of the "peace of
17 mind" to which she is entitled.

18
19 29. Plaintiff has also been harmed by Defendants' inaction
20 because she is required to apply each year for employment authorization
21 (Form I-765) under 8 CFR 274a.12(c)(9) and "advance parole" (Form I-
22 131), which is a permit to travel abroad and return to this country while
23 her application is pending , under 8 U.S.C. §1182 (d)(5)(A) . Her current
24 employment authorization expires on April 15, 2008. Her current
25 advance parole expires on April 15, 2008. (*See Attachment I*)

30. These applications are costly and time consuming. The filing fees for these applications will increase to \$340 and \$305, respectively, effective July 30, 2007 (*See Attachment J*)

31. The Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. §§555(b) and 701 et seq., are unlawfully withholding or unreasonably delaying action on Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law.

VII. PRAYER

32. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff respectfully prays that the Defendants be cited to appear herein and that, upon due consideration, the Court enter an order:

- (a) requiring Defendants to adjudicate Plaintiffs' I-485 application forthwith
 - (b) awarding Plaintiff reasonable attorney's fees and costs of court and
 - (c) granting such other relief at law and in equity as justice may require.

DATED: July 20, 2007

/s/

LIST OF ATTACHMENTS

(pp. 1-29)

- A Various inquiries and responses
 - B Naturalization Certificate of husband, Amirali Rahmatian
 - C K-3 Visa and Form I-94 evidencing admission in K-3 status on December 29, 2005
 - D Receipt for filing Application for Adjustment of Status (Form I-485) on January 9, 2006
 - E Notice of Approval of K-3 visa petition; Notice of Approval of I-130 visa petition
 - F Notices of fingerprint appointments
 - G Notice of Interview on May 8, 2006
 - H San Francisco District Office Processing Dates Posted July 16, 2007
 - I Evidence of filing extensions of employment authorization (Form I-765) and advance parole (Form I-131)
 - J USCIS Fee Schedule effective July 30, 2007

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